# Ikram Megah Sdn Bhd v Pantiga Resources Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D10(D4)–22–1520 OF 2008
APANDI ALI J
11 AUGUST 2009

*Civil Procedure — Particulars — Further and better particulars — Defendants sought further and better particulars of allegation of fraud and collusion — Whether fulfilled principals governing order for further and better particulars*

The plaintiff claimed that the third defendant had acted in collusion with the rest of the defendants and defrauded the plaintiff. The senior assistant registrar allowed the defendants' application for further and better particulars based on the said allegations of fraud and collusion. The plaintiff appealed against this decision.

**Held**, dismissing the appeal with costs:

(1) It is trite law that allegations of fraud must be specifically pleaded. The plaintiff failed to plead the allegations of fraud with sufficient particularity. The plaintiff did not plead explicitly the acts on the part of the fourth, fifth and sixth defendants that were alleged to constitute fraud and/or collusion with the third defendant. The lack of particulars prejudiced the defendants. The plaintiff had also omitted to state the basis and quantum of the respective losses allegedly caused by each of the defendants to the plaintiff (see paras 10–12).

(2) The defendants had fulfilled all the principles governing an order for further and better particulars (see para 14).

**[Bahasa Malaysia summary**

Plaintif telah mendakwa bahawa defendan ketiga berpakat secara sulit dengan defendan-defendan lain dan menipu plaintif. Penolong kanan pendaftar telah membenarkan permohonan defendan-defendan untuk butir-butir lanjut dan jelas berdasarkan alegasi-alegasi penipuan dan pakatan sulit tersebut. Plaintif telah merayu terhadap keputusan ini.

**Diputuskan**, menolak rayuan dengan kos:

(1) Adalah menjadi undang-undang tetap bahawa dakwaan-dakwaan penipuan tersebut mesti diplidkan dengan khusus. Plaintif gagal memplidkan dakwaan-dakwaan penipuan dengan butiran yang mencukupi. Plaintif tidak memplidkan dengan jelas perbuatan-perbuatan oleh defendan keempat, kelima dan keenam yang dikatakan membentuk penipuan dan/atau pakatan sulit dengan defendan ketiga. Kekurangan butiran tersebut memudaratan defendan-defendan. Plaintif juga gagal untuk menyatakan asas dan kuantum kerugian-kerugiannya yang dikatakan disebabkan oleh setiap defendan terhadap plaintif (lihat perenggan 10–12).

(2) Defendan-defendan telah memenuhi kesemua prinsip yang menentukan suatu perintah untuk butir-butir lanjut dan jelas (lihat perenggan 14).]

**Notes**

For cases on further and better particulars, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4931–4940.

**Cases referred to**

*Batcha Ammal v Ponnachi* [1965] 2 MLJ 43, FC (refd)

*Dato' Seri Dr Ling Liong Sik v Krishna Kumar s/o Sivasubramaniam* [2002] 2 MLJ 278; [2002] 2 CLJ 642, HC (refd)

**Legislation referred to**

Rules of the High Court 1980 O 18 rr 12 (1), (3)

*Leong Mun Yin (Choong & Co) for the plaintiff.*
*Henry Lean (William Leong & Co) for the defendants.*

**Apandi Ali J:**

ENCLOSURE 26

**[1]** This is the plaintiff's notice of appeal against the learned senior assistant registrar's decision dated 22 December 2008 in allowing the defendants' application for further and better particulars (encl 22).

BACKGROUND OF CASE

**[2]** The plaintiff's claim against the first, second, fourth, fifth and sixth defendants is that the third defendant, Mr Yen Kok Ho, who was a general

manager of the plaintiff, acted in collusion with the rest of the defendants and defrauded the plaintiff:

(a) by causing the plaintiff to purchase raw materials from the first and second defendants and enriching the first and second defendants at the expense of the plaintiff as such raw materials could have been purchased by the plaintiff at a lower cost directly from the suppliers; and

(b) by creating fictitious invoices and enriching themselves from the payments made by the plaintiff for such fictitious invoices.

**[3]** The allegations of fraud and collusion contain in paras 10(a) and (b), 11, 12 and 14 of the statement of claim.

**[4]** Hence, the defendants filed this application for further and better particulars based on the said allegations of fraud and collusion.

**[5]** The plaintiff/appellant's submissions in brief are as follows:

(a) The particulars contained in the SOC are more than sufficient to enable the first, second, fourth, fifth and sixth defendants to plead their defence.

(b) The further and better particulars applied for by the defendants is nothing more than fishing for evidence.

(c) The further and better particulars applied for by the defendants are and in any event can already be found in the investigative review report and the supplementary investigative report annexed to the plaintiff's affidavit in support of the plaintiff's SIC; and

(d) That the further and better particular applied for by the defendants should more appropriately be given as evidence at the trial proper of this suit by the plaintiff's witness which conducted the investigative review and prepared the investigative review report and the supplementary investigative review report.

**[6]** The defendants/respondents' submissions, in brief are as follows:

(a) The plaintiff must plead specifically and distinctly and with the utmost particularity so that the pleading is clear and without any reasonable doubt as to what is being alleged;

(b) The lacks of particulars is, in particular, prejudicial to the fourth, fifth and sixth defendants; and

(c) That the plaintiff did not plead explicitly the acts on the part of the fourth, fifth and sixth defendants that are alleged to constitute fraud

and/or collusion with the third defendant. A

ISSUES

**[7]** Whether an order for further and better particulars should be granted in the circumstances. B

FINDINGS

**[8]** This is the plaintiff's notice of appeal against the SAR's decision dated 22 December 2008 in allowing the defendants' application for further and better particulars vide (encl 22) under O 18 r 12(3) of the RHC. Order 18 r 12(3) provides: C

> (3) The court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case of the case on which he relies, and the order may be made on such terms as the Court thinks just. D

E

**[9]** The legal principles governing further and better particulars were concisely stated in the case of *Dato' Seri Dr Ling Liong Sik v Krishna Kumar Sivasubramaniam* [2002] 2 MLJ 278; [2002] 2 CLJ 642, which, inter alia, held: F

> At the out set it is necessary to state the functions of particulars. This is comprehensively set out in the *Supreme Court Practice*, 1997, Vol 1, p 308 which reads:
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> The function of particulars is accordingly: G
>
> (a) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved (per Lindley LJ in *Duke v Wisde* (1897) 77 LT 67 at p 68; per Buckley LL in *Young & Co v Scottish Union & Co* (1907) 24 TLR 73 at p 74; *Aga Khan v Times Publishing Co* [1924] 1 KB 675 at p 679); H
>
> (b) to prevent the other side from being taken by surprise at the trial (per Cotton LJ in *Spedding v Fitzpatrick* (1888) 38 Ch D 410 at p 413. *Thomson v Birkley* (1882) 31 WR 230;
>
> (c) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial (per Cotton LJ *ibid*; per Jessel MR in *Thorp v Holdsworth* (1876) 3 Ch D 637 at p 639; *Elkington v London Association for the Protection of Trad* (1911) 27 TLR 329 at p 330); I

(d) to limit the generality of the pleadings (per Thesiger LJ *Saunders v Jones* (1877) 7 Ch D 435) or of the claim or the evidence (*MiIbank v Milbank* [1900] 1 Ch 376 at p 385);

(e) to limit and define the issues to be tried, and as to which discovery is required (*Yorkshire Provident Life Assurance Co v Gilbert* [1895] 2 QB 148; per Vaughan Williams LJ in *Milbank v Milbank* [1900] 1 Ch 376 at p 385);

(f) to tie the hands of the party so that he cannot without leave go into any matters not included (per Brett LJ *in Philipps v Philipps* (1878) 4 QBD 127 at p 113; *Woolley v Broad* [1892] 2 QB 317; see also 'All material facts' para 18/7/10 and *Wooley v Broad* [1892] 2 QB 317). But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings (*Dean of Chester v Smelting Corp* [1902] WN 5; *Hewson v Cleeve* [1904] 2 Ir R 536).

**[10]** The defendants filed the application for further and better particulars based on allegations of fraud and collusion as pleaded in paras 10(a) and (b), 11, 12 and 14 of the statement of claim. It is trite law that allegations of fraud must be specifically pleaded. This is so provided under O 18 r 12(1) of the Rules of the High Court which reads:

(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words:

(a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

**[11]** From the pleadings it can be seen that the plaintiff failed to plead the allegations of fraud with sufficient particularity. The plaintiff did not plead explicitly the acts on the part of the fourth, fifth and sixth defendants that are alleged to constitute fraud and/or collusion with the third defendant. The lack of particulars will obviously prejudice the defendants. Without the particulars, the defendants will be at a handicap to prepare the evidence for the trial in this case.

**[12]** In addition, the plaintiff had omitted to state the basis and quantum of the respective losses allegedly caused by each of the defendants to the plaintiff.

**[13]** Therefore, it is reasonable to conclude that there is legitimate expectation that the plaintiff is required to plead all material facts on which it relies on for his claim. In the case of *Batcha Ammal v Ponnachi* [1965] 2 MLJ 43, the court held that:

> the object (of further and better particulars) is to ensure that a defendant is informed with reasonable particularity as to the various matters which are alleged against him.

CONCLUSION

**[14]** In the circumstances and reasons given above, it is reasonable to conclude that the defendants have fulfilled all the principles governing an order for further and better particulars.

**[15]** As such, I find no reason to disturb the learned senior assistant registrar's decision in allowing the defendants' application for further and better particulars. Therefore this appeal vide encl 26 is dismissed with costs.

*Appeal dismissed with costs.*

Reported by Kanesh Sundrum